

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION**

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DONALD J. TRUMP, Candidate for President of the  
United States of America,

Plaintiff,

v.

THE WISCONSIN ELECTIONS COMMISSION, and its  
members, ANN S. JACOBS, MARK L. THOMSEN,  
MARGE BOSTELMANN, DEAN KNUDSON,  
ROBERT F. SPINDELL, JR., in their official capacities,  
SCOTT MCDONELL in his official capacity as the Dane  
County Clerk, GEORGE L. CHRISTENSON in his  
official capacity as the Milwaukee County Clerk,  
JULIETTA HENRY in her official capacity as the  
Milwaukee Election Director, CLAIRE WOODALL-  
VOGG in her official capacity as the Executive Director  
of the Milwaukee Election Commission, MAYOR TOM  
BARRETT, JIM OWCZARSKI, MAYOR SATYA  
RHODES-CONWAY, MARIBETH WITZEL-BEHL,  
MAYOR CORY MASON, TARA COOLIDGE, MAYOR  
JOHN ANTARAMIAN, MATT KRAUTER, MAYOR  
ERIC GENRICH, KRIS TESKE, in their official  
capacities; DOUGLAS J. LA FOLLETTE, Wisconsin  
Secretary of State, in his official capacity, and TONY  
EVERS, Governor of Wisconsin, in his official capacity.

Case No. 20CV1785

Defendants.

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**DEFENDANT GOVERNOR EVER'S RESPONSE TO TRUMP'S EXPEDITED CIVIL  
LOCAL RULE 7(h) MOTION FOR LEAVE TO FILE A SUR-REPLY BRIEF  
IN OPPOSITION TO THE GOVERNOR'S REQUEST FOR FEES AND SANCTIONS**

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Plaintiff Donald Trump filed an expedited motion, pursuant to Civil L.R. 7(h), for leave to file a sur-reply brief. (Dkt. 173) In response, Defendant Governor Tony Evers states the following:

1. On March 31, 2021, Governor Evers filed a motion for fees and sanctions, with a brief and supporting declarations. (Dkt. 144-151) On July 12, 2021, Trump filed a consolidated brief in opposition to that motion and motions by some co-Defendants for fees and sanctions. (Dkt. 164) On August 27, 2021, Governor Evers filed a reply brief in support of his motion, along with a supplemental declaration in support. (Dkt. 170-171)
2. Governor Evers's reply brief cited two recent decisions assessing sanctions against lawyers who litigated post-election lawsuits. (Dkt. 170 at 2, 10-13 (citing *King v. Whitmer*, No. 20-13134, --- F. Supp. 3d ---, 2021 WL 3771875 (E.D. Mich. Aug. 25, 2021); *O'Rourke v. Dominion Voting Sys. Inc.*, No. 20-CV-3747, --- F. Supp. 3d ---, 2021 WL 3400671 (D. Colo. Aug. 3, 2021))<sup>1</sup>) Both decisions are designated for publication, but F. Supp. 3d citations are not yet available.
3. Governor Evers cited *King* and *O'Rourke* in an effort to provide complete and accurate arguments to this Court. There was no attempt to treat Trump unfairly.
4. Trump now seeks to address *King* and *O'Rourke* in a sur-reply. (Dkt. 173)
5. Governor Evers does not object to Trump's request for a sur-reply, so long as Governor Evers—as the proponent of the fees motion, and thereby the party entitled to the last word<sup>2</sup>—has an opportunity to submit a short sur-response.
6. Trump's proffered sur-reply argues that Governor Evers raised new legal arguments and facts in reply. (Dkt. 173-1 at 2-3, 5) This is incorrect. Governor Evers will address this issue, as well as Trump's efforts to distinguish *King* and *O'Rourke*, in his sur-response.

WHEREFORE, Defendant Governor Tony Evers respectfully asks that, if this Court grants Plaintiff Trump's motion for leave to file a sur-reply, it grant Governor Evers an opportunity to file a sur-response of up to 6 pages in length within one week of the Court's order.

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<sup>1</sup> Governor Evers's reply brief cited to, and provided a copy of, the slip opinion from the *King* docket.

<sup>2</sup> See, e.g., *Gorokhovsky v. State Pub. Def. Off.*, No. 20-CV-1098-PP, 2021 WL 39544, at \*5 (E.D. Wis. Jan. 5, 2021) ("The movant gets the last word on the movant's own motion.").

Respectfully submitted this 4th day of September, 2021.

/s/ Jeffrey A. Mandell

Jeffrey A. Mandell  
Rachel E. Snyder  
Richard A. Manthe  
STAFFORD ROSENBAUM LLP  
222 W. Washington Ave., Suite 900  
Madison, WI 53701-1784  
Telephone: 608-256-0226  
Email: [jmandell@staffordlaw.com](mailto:jmandell@staffordlaw.com)  
Email: [rsnyder@staffordlaw.com](mailto:rsnyder@staffordlaw.com)  
Email: [rmanthe@staffordlaw.com](mailto:rmanthe@staffordlaw.com)

*Attorneys for Defendant,  
Governor Tony Evers*